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UNITED STATES DISTRICT COURT WESTERN DISTRICT OF WASHINGTON AT SEATTLE

RICHARD HENRY MUTCH,

Petitioner,

v.

SCOTT FRAKES,

Respondent.

Case No. C9-1107RSL

ORDER DENYING

CERTIFICATE OF APPEALABILITY

This matter comes before the Court on petitioner's "Notice of Appeal" which the Court considers a request for a certificate of appealability. Because the Court failed to consider whether a certificate should issue when it issued a ruling adverse to petitioner, it does so now.

To obtain a certificate of appealability, the petitioner must make a substantial showing of the denial of a constitutional right. 28 U.S.C. § 2253(c)(2). "Obviously the petitioner need not show that he should prevail on the merits. He has already failed in that endeavor." Barefoot v. Estelle, 463 U.S. 880, 893 n.4 (1983). Rather, he must demonstrate that the resolution of the habeas petition is debatable among reasonable jurists or that the issues presented were "adequate to deserve encouragement to proceed further." Slack v. McDaniel, 529 U.S. 473, 483-84 (2000). Where a petition is dismissed on procedural grounds, the Court must determine whether "jurists of reason" would debate (1) whether the petition states a valid claim of the denial of a constitutional right and (2) whether the district court's procedural ruling was correct. Slack, 529 U.S. at 484.

ORDER DENYING CERTIFICATE OF APPEALABILITY

Having reviewed the record in this case, including the Report and Recommendation of the Honorable James P. Donohue, United States Magistrate Judge, the Court finds that the dismissal of petitioner's petition is not debatable among reasonable jurists. Petitioner's claims should not, therefore, be the subject of an appeal. For all of the foregoing reasons, petitioner's request for a certificate of appealability is DENIED. Dated this 23rd day of March, 2010. MMS Casnik Robert S. Lasnik United States District Judge 

ORDER DENYING CERTIFICATE OF APPEALABILITY